



CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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LINDA S. ADAMS
SECRETARY FOR
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ARNOLD SCHWARZENEGGER
GOVERNOR

Certified Mail: 7003 1680 0000 6173 5432

January 31, 2008

Ms. Yvonne Sanchez
Deputy Director
DTSC, Imperial County CUPA
5796 Corporate Avenue
Cypress, California 90630

Dear Ms. Sanchez:

The California Environmental Protection Agency (Cal/EPA), Office of Emergency Services, Department of Toxic Substances Control (DTSC), and the State Water Resources Control Board conducted a program evaluation of DTSC Imperial County's Certified Unified Program Agency (CUPA) on December 12 and 13, 2007. The evaluation was comprised of an in-office program review and field oversight inspections. The State evaluators completed a Certified Unified Program Agency Evaluation Summary of Findings with your agency's program management staff, which includes identified deficiencies, with preliminary corrective actions and timeframes, program observations and recommendations, and examples of outstanding program implementation.

The enclosed Evaluation Summary of Findings is now considered final and based upon review, I find that DTSC Imperial County's program performance is satisfactory with some improvement needed. To complete the evaluation process, please submit Deficiency Status Reports to Cal/EPA that depict your agency's progress towards correcting the identified deficiencies. Please submit your Deficiency Status Reports to Kareem Taylor every 90 days after the evaluation date. The first deficiency progress report is due on March 31, 2008.

Cal/EPA also noted during this evaluation that DTSC Imperial County has worked to bring about a number of local program innovations, including the creation of the Field Inspection System (FIS) in Envision and the CUPA's educational outreach process. We will be sharing these innovations with the larger CUPA community through the Cal/EPA Unified Program web site to help foster a sharing of such ideas statewide.

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Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by email at jbohon@calepa.ca.gov.

Sincerely,

[Original signed by Don Johnson]

Don Johnson
Assistant Secretary
California Environmental Protection Agency

Enclosure

cc/Sent via email:

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CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION SUMMARY OF FINDINGS

CUPA: DTSC Imperial County

Evaluation Date: December 12 and 13, 2007

EVALUATION TEAM

Cal/EPA: Kareem Taylor

SWRCB: Terry Snyder

OES: Fred Mehr

OES: Jeff Tkach

DTSC: Frederick Thomas

DTSC: Sangat Kals, PhD

This Evaluation Summary of Findings includes the deficiencies identified during the evaluation, program observations and recommendations, and examples of outstanding program implementation activities. The evaluation findings are preliminary and subject to change upon review by state agency and CUPA management. Questions or comments can be directed to Kareem Taylor at (916) 327-9557.

	<u>Deficiency</u>	<u>Preliminary Corrective Action</u>
1	<p>The CUPA is not meeting the mandated inspection frequency for the Hazardous Materials Business Plan (HMBP) program of one inspection every three years. This includes agricultural handlers subject to the business plan program. The CUPA's Annual Summary Reports show the following:</p> <ul style="list-style-type: none"> In FY 06/07, 101 (15%) out of 667 HMBP facilities in Imperial County were routinely inspected. In FY 05/06, 0 HMBP facilities in Imperial County were routinely inspected. <p>CCR, Title 27, Section 15200 (a)(3)(A) (Cal/EPA) (OES) HSC, Chapter 6.95 Section 25503.5(a)</p>	<p>By June 30, 2008, and annually thereafter, the CUPA will inspect at least one third (33% per year) of its HMBP facilities.</p> <p>By March 30, 2008, develop a plan to meet the inspection frequency for the HMBP program. Submit the plan along with the CUPA's first deficiency status report.</p>
2	<p>The CUPA is not conducting inspections with a frequency consistent with its Inspection and Enforcement Plan. Specifically, the CUPA is not meeting its scheduled inspection frequency for its hazardous waste generator (HWG) program of one inspection every three years. The CUPA's Annual Summary Reports show the following:</p>	<p>By June 30, 2008, and annually thereafter, the CUPA will inspect at least one third (33% per year) of its HWG facilities.</p> <p>By March 30, 2008, develop a plan to meet the inspection frequency for the</p>

Certified Unified Program Agency (CUPA)
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	<ul style="list-style-type: none"> In FY 06/07, 98 (18%) out of 551 HWG facilities in Imperial County were routinely inspected. In FY 05/06, 0 HWG facilities in Imperial County were routinely inspected. <p>CCR, Title 27, Section 15200(a)(3)(A) (Cal/EPA) (DTSC)</p>	HWG program. Submit the plan along with the CUPA's first deficiency status report.
3	<p>The CUPA is not meeting the mandated inspection frequency for the CalARP program of one inspection every three years. The CUPA's Annual Summary Reports show the following:</p> <ul style="list-style-type: none"> In FY 06/07, 1 (2%) out of 44 CalARP facilities in Imperial County were routinely inspected. In FY 05/06, 0 CalARP facilities in Imperial County were routinely inspected. <p>CCR, Title 27, Section 15200 (a)(3)(A) (Cal/EPA) (OES)</p>	<p>By June 30, 2008, and annually thereafter, the CUPA will inspect at least one third (33% per year) of its CalARP facilities.</p> <p>By March 30, 2008, develop a plan to meet the inspection frequency for the CalARP program. Submit the plan along with the CUPA's first deficiency status report.</p>
4	<p>The CUPA is not documenting violations in a manner consistent with the definitions of minor, Class II or Class I as provided in law and regulation.</p> <ol style="list-style-type: none"> Brawley Express' 7/18/06 inspection indicated the facility had not kept copies of manifests for the required three year period. This was cited as a minor violation when it is a Class II violation. Calexico Freight Lines' 12/7/07 Failure to Return to Compliance letter indicates that there were violations cited during a 6/5/07 inspection. The level of the violations was not documented; some appear to be Class II. <p>CCR, Title 27, Section 15200 (a)(8) HSC, Chapter 6.5, Sections 25110.8.5 and 25117.6 CCR, Title 22, Section 66260.10 (DTSC)</p>	By January 13, 2008, the CUPA shall develop a plan of action to ensure that staff is trained and familiar with the statutory and regulatory definitions for the different hazardous waste violation classifications, and is documenting them accordingly. The plan of action should also involve training in the violation classification guidance document.
5	<p>The CUPA is not fully implementing its Inspection and Enforcement Program and Plan.</p> <ol style="list-style-type: none"> Brawley Express was issued a Notice to Comply/Summary of Violations on 7/18/06, to be corrected by 8/18/06. However, the CUPA didn't receive a Return to Compliance certificate until 11/13/06. The CUPA issued its Return to Compliance response letter more than a year later on 12/4/07. There is no documentation that the CUPA followed up with facility or implemented any enforcement action. 	By January 13, 2008, the CUPA shall develop a plan of action to fully implement its Inspection and Enforcement Program and Plan.

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	<p>2) Callexico Freight Lines was issued a Notice to Comply/Summary of Violations on 6/5/07. A Failure to Return to Compliance letter was issued on 12/7/07. There has been no follow up, such as, reinspection or escalation of violation status.</p> <p>HSC Chapter 6.5, Section 25404.2(a)(3) CCR, Title 27, Section 15200(a)(f) (DTSC)</p>	
6	<p>The CUPA is unable to document that all facilities that have received a notice to comply citing minor violations have returned to compliance within 30 days of notification. The business shall either submit a Return to Compliance Certification in order to document its compliance or in the absence of certification the CUPA shall follow up with the business to confirm that compliance has been achieved.</p> <p>CCR, Title 27, Section 15200(a)(8) (DTSC)</p>	By January 13, 2008, the CUPA shall ensure that facilities who are cited for minor violations during hazardous waste inspections have either submitted a Return to Compliance Certification or been followed up with within the required corrective action date.
7	<p>CUPA is not ensuring that business plans are being reviewed for completeness and accuracy. During file review 8 out of 9 files were missing either, site maps, training programs, emergency response plans, or annual inventory certifications.</p> <p>HSC, Chapter 6.95, Section 25505 (a)(2) (OES)</p>	By March 30 2008, the CUPA must submit an action plan that will ensure that business plans are being reviewed for completeness and accuracy.
8	<p>CUPA has not reviewed or updated their area plan within the last 36 months. The area plan was implemented in 1992.</p> <p>HSC, Chapter 6.95, Section 25503 (d) (OES)</p>	By December 31, 2008, the CUPA shall submit an area plan update to the Governors Office of Emergency Services.
9	<p>CUPA is not forwarding the data collected with other responsible agencies in a format easily interpreted by those agencies. CUPA is forwarding data in CD format; however, local agencies are without computer access in their first responder vehicles.</p> <p>HSC, Chapter 6.95, Section 25509.2 (a)(3) (OES)</p>	This deficiency was corrected before completion of the initial report.
10	<p>Emergency Response Plans/Procedures are being submitted without all of the minimum elements necessary. Mitigation, prevention, or abatement of hazards to person's, property or environment, and identification of areas of the facility and mechanical or other systems that require immediate inspection or isolation because of the vulnerability to earthquake related ground motion are missing from submitted plans.</p> <p>CCR, Title 19, Section 2731 (OES)</p>	By March 30, 2008 the CUPA shall submit an action plan to include all elements of the emergency response plans/procedures.

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CUPA Representative	<u>Yvonne Sanchez</u> (Print Name)	<u>Original signed</u> (Signature)
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Evaluation Team Leader	<u>Kareem Taylor</u> (Print Name)	<u>Original signed</u> (Signature)
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Certified Unified Program Agency (CUPA)
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PROGRAM OBSERVATIONS AND RECOMMENDATIONS

The observations and recommendations provided in this section address activities the CUPA are implementing and/or may include areas for continuous improvement not specifically required of the CUPA by regulation or statute.

1. **Observation:** The CUPA is currently taking steps to meet inspections for the HMBP, HWG, and CalARP programs. One new staff was hired in November 2007 and another staff is scheduled to be hired in January 2008.

Recommendation: Send new staff to training workshops such as those offered at the 2008 CUPA Conference. Continue to work to meet inspection frequencies for all UP elements.

2. **Observation:** A CUPA web site is currently in the development stages. The CUPA directs the regulated community to DTSC's, Cal CUPA's, and Cal/EPA's web sites to obtain UP consolidated forms (UPCFs) and compliance information. An Imperial CUPA specific web site would be more convenient for the regulated community to pay their single fee, as well as, obtain UP consolidated forms, compliance information, and outreach materials. A CUPA specific web site may cause Imperial County residents/businesses to be more accepting of the environmental regulatory process.

Recommendation: Continue to develop the CUPA's web site. Proposed implementation date is scheduled for March 2008.

3. **Observation:** The CUPA does not have a Summary of Violations (SOVs) form that allows UST owners/operators to self certify that minor violations have been corrected within an allotted time frame.
4. **Recommendation:** The SWRCB encourages the CUPA to continue developing their SOV form. The form should be for minor violations identified during inspections and should list the codes for the citations and correction dates. The form should allow UST owners/operators to self certify that minor violations have been corrected within an allotted time frame. The CUPA should specify any additional information required to be submitted with the form to assure compliance.
5. **Observation:** In the three of the four files reviewed, some of the documents were not filed chronologically and supporting information was misplaced. The fourth file reviewed was filed by sections and documents were easily found and identified.

Recommendation: The SWRCB strongly encourages the CUPA to ensure that documents are filed chronologically. The SWRCB strongly encourages the CUPA to file documents in sections (e.g. one section for facility forms with related correspondence, one section for inspection forms, one section for general correspondence, etc).

6. **Observation:** The facility inspection reports reviewed did not always contain consent to inspect by the facility owner/operator. Consent, preferably signed by the owner, on the inspection report is important because it strengthens any potential enforcement case against a noncompliant facility.

Recommendation: Document consent granted for all facility inspections by having the owner/operator sign the consent portion of the inspection report.

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- 7. Observation:** The CUPA staff has access to a camera; however, during the file review it was evident that photographs were not taken during most inspections.

Recommendation: Photographs are useful to document violations and the conditions at facilities at the time of the inspection. Date stamped photographs could help strengthen your case should enforcement become necessary.

- 8. Observation:** In some of the files reviewed, in the Certificate of Compliance section, it is noted that the inspection was announced and only one program element was inspected.

Recommendation: Unless the facility is a farm or in a more inaccessible location, inspections should be unannounced and program element inspections should be combined.

- 9. Observation:** The CUPA is not using separate, specific checklists for the different quantity generators and/or tiered permitting facilities during inspections.

Recommendation: Develop a checklist for inspectors to use during inspections of the various facilities due to the number and types of requirements that are unique to these facilities. Checklist(s) should include contingency plan, tank assessment, SB14, incompatible waste, aisle space and waste secure area.

- 10. Observation:** The CUPA has 44 CalARP facilities within their jurisdiction; however, only eight facilities have been inspected. CalARP facilities have extremely hazardous materials and should be a high priority for inspection.

Recommendation: A higher priority should be placed on inspecting CalARP facilities to meet the 3 year cycle requirements.

EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION

1. The CUPA identifies its universe of regulated facilities by reviewing facility lists from Imperial County's Planning department and other agencies, Department of Toxic Substances Control's manifest system, and phone books. The CUPA also visits facilities and sends surveys to facilities that may need to be regulated. The CUPA has better defined its regulated universe since January 2005.

2. CUPA has made a tremendous outreach effort in a community that is mainly agricultural. CUPA schedules community outreach meetings in a manner that is accessible to the community as a whole. The CUPA travels to various locations in Imperial County so that the regulated community may participate in outreach programs more easily. The CUPA performs a number of training courses throughout the year for the regulated community. These include courses in:

- Hazardous Waste and Tiered Permitting Regulation
- Underground Storage Tank/Aboveground Storage Tank (CUPA staff is instructing a UST training course at the 2008 CUPA Conference)
- Vehicle Maintenance Repair
- Business Plan Training
- Hazardous Waste Management Standards in California (also in Spanish)
- Business Owner/Operator Identification and Business Activities Forms
- CalARP

3. The CUPA is designing a Field Inspection System (FIS) in Envision. FIS will allow inspectors to electronically generate inspection checklists and reports, as well as, enter inspection data while out in the field. Currently, Envision is used to record UPCF information and to invoice their facilities. The CUPA also uses MS access and CUPA soft databases to record inspection information (violations, type of inspection, etc.)

4. The CUPA's UST inspector conducted the facility inspection in a thorough and professional manner. The inspector's attention to detail and knowledge of code and regulations resulted in an excellent inspection. During the inspection, a small amount of diesel fuel was found in a dispenser pan which the inspector had the service technician remove and properly dispose of before the monitoring certification was over. The inspector asked the SWRCB evaluator for suggestions on how to improve his inspection technique and procedure.

5. The CUPA has used the Hazardous Waste Tracking System (HWTS) to identify non-manifesting generators of hazardous waste.

6. The CUPA's procedure documents and self audits were very detailed and organized. The procedure folders contained a detailed table of contents with page numbers and labeled folder tabs that separated the different sections. During the evaluation, it was very easy to find specific procedures and plans to review.

7. The CUPA regularly coordinates with various agencies within Imperial County in order to improve environmental protection in the region. These include:

- LEPC/OES Region VI
- Border 2012
- Fire Chief Association

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- Hazardous Waste Task Force of Imperial
- CEQA – Environmental Review Committee for Imperial
- Hazardous Incident Response Committee (HIRC)